

Exhibit D

Transcript of April 12, 2021 Hearing¹

¹ There appears to be a scrivener's error in the date of the attached transcript. The hearing occurred on April 12, 2021, not April 9, 2021.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
53 STANHOPE LLC : Case #19-23013-rdd
For Chapter 11 : 300 Quarropas Street
: White Plains, New York
: April 9, 2021
: 11:03 a.m.
----- :
: TELEPHONE CONFERENCE

TRANSCRIPT OF NOTICE OF HEARING/NOTICE OF HEARING TO CONSIDER
APPROVAL OF DISCLOSURE STATEMENT FOR CHAPTER 11 PLAN OF
LIQUIDATION PROPOSED BY BROOKLYN LENDER LLC (RELATED
DOCUMENT(S)204), DISCLOSURE STATEMENT/DISCLOSURE STATEMENT FOR
CHAPTER 11 PLAN OF LIQUIDATION PROPOSED BY BROOKLYN LENDER LLC
(RELATED DOCUMENT(S)203) FILED BY MATTHEW BENJAMIN STEIN ON
BEHALF OF BROOKLYN LENDER LLC.(ECF #204), CHAPTER 11
PLAN/CHAPTER 11 PLAN OF LIQUIDATION PROPOSED BY BROOKLYN
LENDER LLC FILED BY MATTHEW BENJAMIN STEIN ON BEHALF OF
BROOKLYN LENDER LLC.(ECF #203), NOTICE OF HEARING FOR
DISCLOSURE STATEMENT APPROVAL (RELATED DOCUMENT(S) 198, 200,
196), SECOND AMENDED DISCLOSURE STATEMENTS FOR 55 STANHOPE
LLC, 119 ROGERS LLC, 127 ROGERS LLC, C & YSW, LLC, NATZLIACH
LLC, 106 KINGSTON LLC, AND 167 HART LLC (RELATED
DOCUMENT(S)94) FILED BY MARK A. FRANKEL ON BEHALF OF 53
STANHOPE LLC. (ECF #200), SECOND AMENDED DISCLOSURE STATEMENT
FOR D&W REAL ESTATE SPRING LLC AND MESEROLE AND LORIMER LLC
(RELATED DOCUMENT(S)94) FILED BY MARK A. FRANKEL ON BEHALF OF
53 STANHOPE LLC.(ECF #198), SECOND AMENDED DISCLOSURE
STATEMENT FOR 53 STANHOPE LLC, 325 FRANKLIN LLC, 618 LAFAYETTE
LLC, 92 SOUTH 4TH ST LLC, 834 METROPOLITAN AVENUE LLC, 1125-
1133 GREENE AVE LLC, APC HOLDING 1 LLC; EIGHTEEN HOMES LLC,
AND 1213 JEFFERSON LLC (RELATED DOCUMENT(S)94) FILED BY MARK
A. FRANKEL ON BEHALF OF 53 STANHOPE LLC (ECF #196),OMNIBUS
OBJECTION TO DISCLOSURE STATEMENT (RELATED DOCUMENT(S)198,
200, 196) FILED BY MATTHEW BENJAMIN STEIN ON BEHALF OF
BROOKLYN LENDER LLC. (ECF #219), OBJECTION TO DISCLOSURE
STATEMENT (RELATED DOCUMENT(S) 204) FILED BY MARK A. FRANKEL
ON BEHALF OF 53 STANHOPE LLC. (ECF #220), RESPONSE TO
DISCLOSURE STATEMENT OBJECTION (RELATED DOCUMENT(S)219) FILED
BY MARK A. FRANKEL ON BEHALF OF 53 STANHOPE LLC.(ECF #232)
BEFORE JUDGE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For Debtors:

BACKENROTH FRANKEL & KRINSKY, LLP
BY: MARK FRANKEL, ESQ.
DAVID GOLDWASSER, ESQ.
800 Third Avenue, 11th Floor
New York, New York 10022

ABRAMS, FENSTERMAN, FENSTERMAN,
EISMAN, FORMATO, FERRARA, WOLF
& CARONE, LLP
BY: ANDREA CARUSO, ESQ.
1 MetroTech Center, Suite 1701
Brooklyn, New York 11201

For the United States:

UNITED STATES ATTORNEY'S OFFICE
SOUTHERN DISTRICT OF NEW YORK
BY: SAMUEL DOLINGER, ESQ.
86 Chambers Street, 3rd Floor
New York, New York 10007

For Brooklyn Lender:

KASOWITZ BENSON TORRES LLP
BY: MATTHEW STEIN, ESQ.
JENNIFER RECINE, ESQ.
DAVID ROSNER, ESQ.
1633 Broadway
New York, New York 10019

For Israeli Claimants:

NORRIS MCLAUGHLIN, P.A.
BY: MELISSA PENA, ESQ.
7 Times Square, 21st Floor
New York, New York 10036

Transcription Service:

Carole Ludwig,
Transcription Services
155 East Fourth Street, #3C
New York, New York 10009
Phone: (212) 420-0771
Email: Transcription420@aol.com

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E X A M I N A T I O N S

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- Direct</u>	<u>Re- Cross</u>
NONE				

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
NONE				

1 (Proceedings commence at 11:03 a.m.)

2 THE COURT: So I think that just leaves one
3 remaining matter on the calendar, anyone who is on for any
4 other case should certainly feel free to leave the call at
5 this point. So the last matter on the calendar is In re 53
6 Stanhope LLC, et al.

7 MS. ANDREA CARUSO: Your Honor, Andrea Caruso,
8 special counsel to the debtors from Abrams Fensterman.

9 THE COURT: Good morning.

10 MS. CARUSO: Good morning.

11 MS. MELISSA PENA: Melissa Pena from the law
12 firm Norris McLaughlin on behalf of the Israeli
13 claimants.

14 THE COURT: Good morning.

15 MR. MATTHEW STEIN: Good morning, Your Honor,
16 Matthew Stein, Kasowitz Benson Torres, on behalf of
17 Brooklyn Lender, and I'm here with my colleagues,
18 David Rosner and Jen Recine.

19 THE COURT: Okay, good morning.

20 MR. SAMUEL DOLINGER: Good morning, Your
21 Honor, Samuel Dolinger from the US Attorney's Office
22 for the United States.

23 THE COURT: Good morning. Mr. Frankel, I see you
24 on the hearing dashboard, you may be on mute?

25 MR. MARK FRANKEL: I suppose I was, can you

1 hear me, yes, you can hear me now, I don't know why
2 that happened. Yes, Mark Frankel, Backenroth, Frankel
3 and Krinsky, attorneys for the debtors, and David
4 Goldwasser is on the line, as well.

5 THE COURT: Okay, good morning. Does anyone
6 else want to note their appearance?

7 Okay, we're here on two matters, the hearings
8 on the debtor's request for approval of three separate
9 disclosure statements for three separate Chapter 11
10 plans. On Friday the debtors filed proposed third
11 amended disclosure statements and second amended
12 plans, again in respective three separate plans, what
13 have been referred to as a refinancing plan, a
14 reinstatement plan and a sale plan for the different
15 debtors listed in those plans.

16 The disclosure statements, albeit not the most
17 recent ones, were objected to by Brooklyn Lender, the
18 debtor's primary creditor. We're also here on
19 Brooklyn Lender's request for a joint, I'm sorry, for
20 an amended disclosure statement for a joint amended
21 plan for all of the debtors which in a prior version
22 was also objected to, this time by the debtors.

23 I received the amended disclosure statement
24 and amended plan by Brooklyn Lender this morning. It's
25 dated Sunday, the 11th, but I've had a chance to review

1 the redline. The changes, though in some respects
2 important, were not extensive. So you should assume I
3 have read those pleadings as well as the parties'
4 respective replies to the objections that were filed.

5 I don't know if there are any further updates.
6 What I propose is that we go ahead first with the
7 debtor's three proposed disclosure statements, at
8 which one anyone can tell me if there are any updates,
9 and then we proceed with the Brooklyn Lender request
10 for approval of disclosure statement.

11 MR. FRANKEL: Judge, this is Mark Frankel. I
12 have no updates for you and I'm prepared to proceed on
13 the debtor's disclosure statements. In response to the
14 objections, we believe we have resolved the most
15 significant issues which were the financial issues on
16 the financing and on the refinancing and the
17 reinstatement plans we have shown an additional
18 \$600,000 on the commitment letter for the refinancing
19 and an extension of time on that. And for both the
20 refinancing and the reinstatement we have shown in
21 exhibit E an additional \$1 million of new value that
22 the interest holders have put into escrow conditioned
23 on plan confirmation to fund additional amounts that
24 may be due that would include additional amounts for
25 Brooklyn Lender attorney fees and if there are

1 additional amounts with respect to claims that may
2 arise in the meantime.

3 With respect to the sale plans, we have also
4 attached to the third amended disclosure statement the
5 listing agreement with Rosewood which is a very
6 experienced bankruptcy auctioneer and prepared to sell
7 the properties according to routine bankruptcy sale
8 procedures. We believe that these disclosure
9 statements describe plans that can be confirmed and
10 should be confirmed because with respect to the
11 refinancing and reinstatement plans, they avoid
12 forfeitures of the properties which we believe was
13 contemplated by the bench ruling on the prior debtor's
14 plan, and on the sale plan provides for a quick sale
15 which is important because of default interest
16 accruing. And by the same token, quick refinancing is
17 important for the refinancing plans because of the
18 accrual of default interest.

19 The Brooklyn Lender plans, we are not up to
20 that yet but we believe consideration --

21 THE COURT: No, let's not cover those at this
22 point, let's just focus on the debtor's plan and then
23 we'll move to the Brooklyn Lender plan --

24 MR. FRANKEL: Well then, Judge, I would just
25 recap at this point and say that we believe that our

1 plans can be confirmed and consummated quickly before
2 24 percent interest accrues and makes them not
3 feasible. That we have described an efficient
4 transparent process that can be achieved at arm's
5 length and that the Court should consider our plans as
6 soon as convenient and defer Brooklyn Lender's
7 disclosure statements until after our plans have been
8 considered.

9 THE COURT: Okay. As I said, I've reviewed
10 Brooklyn Lender's objection to the disclosure
11 statement and, as I think everyone on the call knows,
12 I generally carefully review plans and disclosure
13 statements before the disclosure statement hearing and
14 will give my own comments to the plan proponent where
15 I think it's important to either add information or fix
16 some problem in the plan that I believe needs to be
17 addressed at this point as opposed to maybe addressed
18 depending upon how people vote or how the evidence
19 shakes out if there's a contested confirmation
20 hearing. So I'm ready to do that, as well, but if
21 counsel for Brooklyn Lender wants to cover more than
22 is in the objection or to highlight what they want to
23 have me hear in light of the objection, I'm happy to
24 hear them now.

25 MR. STEIN: Good morning, Your Honor, for the

1 record, Matthew Stein, Kasowitz, Benson, Torres, on
2 behalf of Brooklyn Lender. Your Honor, given your
3 comments I'll be brief, but there are a couple of high
4 level points that need to be hit upon.

5 First, with respect to the refinance plan, it
6 is our opinion, and it's based on looking at the
7 numbers attached both as Exhibit B and Exhibit D to
8 the disclosure statement for that D&W plan, that the
9 amounts are still insufficient to provide for the
10 payments contemplated by that plan. The proposed exit
11 facility, as it sits, which is Exhibit A to the plan,
12 is at \$15 million, leaving approximately \$14 million
13 after payment of closing costs.

14 Exhibit B indicates that there's \$14,162,000
15 of payments. Assuming the size of the Brooklyn Lender
16 claim as the debtors have put in the plan, we believe
17 that that amount is short even under existing orders
18 by about \$390,000. So that even if \$100,000 of
19 additional capital is raised from interest holders as
20 contemplated, the amount of financing is still short
21 to fund payments that the plan says needs to be made.

22 Moreover, with the extra \$600,000 that Maguire
23 is willing to commit, the language in the commitment
24 letter provides that it's willing to commit if the
25 Court rules a higher total payoff amount. And given

1 now that that condition has not been met, I mean the
2 financing as exists today, it doesn't cover an
3 existing shortfall. If there are additional fees or
4 additional costs --

5 THE COURT: I'm sorry --

6 MR. STEIN: Sure.

7 THE COURT: Are you reading that language to
8 say that I have to rule on it now?

9 MR. STEIN: Now --

10 THE COURT: (indiscernible) applicable?

11 MR. STEIN: No, what I'm saying is that the
12 commitment letter, itself, makes that \$600,000
13 conditional so that, such that it is only, they're
14 only willing to lend that \$600,000 if there is a, and
15 it's a defined term but it doesn't seem to be defined
16 anywhere, it is capital T, capital P, capital A, total
17 payoff amount. I'm not exactly sure what that is, but
18 it seems, as we sit here today, that condition has not
19 been met and, therefore, there is a financing
20 shortfall --

21 THE COURT: You just said what you said it
22 didn't mean. So I don't know what you're saying. Of
23 course it's not met today, it doesn't mean what
24 (indiscernible) to rule today. Move on to your next
25 point.

1 MR. STEIN: Okay. There's also the financing
2 is not sufficient to cover the disputed claim reserve
3 which under the plan needs to be funded.

4 THE COURT: Well for disputed claims, but your
5 claim doesn't dispute it. It's on appeal, that's not
6 a disputed claim. You've cited no case law to that
7 effect and I think you know why, because there is
8 none.

9 MR. STEIN: Understood, Your Honor. I'll move
10 on.

11 THE COURT: Okay.

12 MR. STEIN: The other point is that the
13 outside date of May 31st is exceedingly tight in giving
14 normal notice, such that if even the disclosure
15 statement is approved today, the confirmation hearing
16 would be five weeks from today which would be May 17th.
17 May 31st is exactly two weeks after that date, so it's
18 an exceedingly tight schedule. And to the extent that
19 the schedule slips at all, it's unclear whether the
20 debtors have had continued conversations about
21 extending that date even further.

22 THE COURT: Okay.

23 MR. STEIN: with respect to, moving on, with
24 respect to the 55 Stanhope plan, the reinstatement
25 plan, the disclosure statement references Exhibits D,

1 E and F, that are not attached to the existing
2 disclosure statement. Exhibit F is particularly
3 important because the debtors cite that for proof that
4 the net operating income will be sufficient to fund
5 interest payments on the reinstated debt. Based on our
6 review of the monthly operating reports, it seems as
7 if the rental income has been declining to the point
8 where it would be barely sufficient to pay those
9 monthly interest payments and leave nothing left over
10 for operating expenses.

11 THE COURT: Well, Mr. Frankel, what is the
12 status of those three exhibits?

13 MR. FRANKEL: I made a mistake on Friday when
14 I was assembling them, I did not attach them. I can do
15 that.

16 THE COURT: Well have they changed from
17 version two of the disclosure statement?

18 MR. FRANKEL: Yes, Exhibit F are projections
19 which are important to show feasibility to pay the
20 amounts required under the loans. And Exhibit E is the \$1
21 million escrow letter. That would be the same as in the
22 refinance Exhibit E. So that's fairly easy to attach. And
23 Exhibit F are projections that were unintentionally
24 omitted.

25 THE COURT: Okay. It wasn't clear to me whether

1 the objection actually posited a shortfall or just said
2 there might be one.

3 MR. STEIN: Your Honor, we said that there
4 might be one. At the time that we filed the objection
5 the most recent operating report that was on file was
6 for November. Since then, last week, the debtors have
7 caught up and filed their December, January and
8 February monthly operating reports. Other than
9 December where rental income for these debtors I
10 believe ticked up to about \$78,000 per month, January
11 and February were both down. January was about \$67,000
12 and February was \$61,000. At those levels, we do not
13 believe that the debtor can fund operations and also
14 pay the monthly interest payments that would be
15 required under the reinstated debt.

16 THE COURT: Okay.

17 MR. STEIN: And then briefly, Your Honor, just
18 moving to adequate information that we believe should
19 be added to the disclosure statement. First,
20 especially with respect to the reinstatement and
21 refinance plan, both those disclosure statements
22 should include a statement about the risk to the
23 extent that Your Honor believes that the funding and
24 financing statements that I've made today are not
25 (indiscernible) confirmability objections, there

1 should at least be a disclosure indicating there is
2 that risk to the extent that the Brooklyn Lender claim
3 is higher than what it disclosed in the disclosure
4 statement that does present difficulties for the
5 debtor to effectuate the terms of the plan.

6 I should also note that in the disclosure
7 statement, the debtor's description of the appeal is
8 incorrect as a matter of law in that they highlight
9 the fact that we did not seek a state pending appeal
10 such that this is, so the Court's opinion is law of
11 the case. While it is law of the case, there has been
12 nothing that Brooklyn Lender has needed to stay
13 because there is no confirmation order yet and there
14 is no risk of mootness. So we do not think that that
15 is an appropriate statement to include in any of the
16 three disclosure statements.

17 THE COURT: Well it's accurate, right, you
18 haven't sought a state pending appeal.

19 MR. STEIN: Correct, but there is a, that is
20 correct and it is law of the case, but I don't think
21 it has, that has the meaning that the debtors are
22 intending it to mean.

23 THE COURT: Well, they don't say what they
24 think it means.

25 MR. STEIN: Understood, Your Honor.

1 THE COURT: Okay.

2 MR. STEIN: And with that I'll yield the
3 podium.

4 THE COURT: Well, so on the sale plan is there
5 any issue there?

6 MR. STEIN: I'm sorry, Your Honor. On the
7 sale plan, simply just on the adequate disclosure, we
8 believe that there should be a disclosure to the
9 extent that Brooklyn Lender believes that its claim
10 amount is higher and that there is risk given the
11 pending appeal. And there is already a statement about
12 the legal fees. But I believe that the risk due to
13 the pending appeal should be clarified.

14 THE COURT: Mr. Frankel, I thought you
15 referenced the pending appeal in each of the three
16 amended disclosure statements? All right. Well let
17 me go through with you my comments on the plan and
18 disclosure statement for each of the three documents.
19 Let me start with the D&W Real Estate Spring LLC and
20 Meserole and Lorimer LLC documents. And there are
21 conforming changes to the disclosure statement, too.

22 At paragraph 36, the first time it comes up in
23 that plan, it refers to the new owners getting the
24 property under Section 363(B) of the Bankruptcy Code.
25 I guess I have two questions related to that. First,

1 this isn't really a sale, right, they're not buying
2 the equity except to the extent that their
3 contributing the \$1 million?

4 MR. FRANKEL: Yes.

5 THE COURT: Okay. So I think what you need to
6 say is that they're getting the property under the
7 plan, under 1141 including (C) of the Bankruptcy Code
8 and 1129, it's not really a 363(B).

9 Secondly, related to that, I think you need to
10 have a mechanism here in the section, "Means for
11 Implementation," which is on page 13, paragraph 67,
12 which is headed, "Sources of Funds." And again, I
13 don't think it's under 363(B), I think it's under 1129
14 and 1141. And I think either here or in the
15 disclosure statement you need to spell out the
16 disclosure that is being provided by the existing
17 interest holders, which you should capitalize in the
18 third line of 67, to obtain the equity in the new
19 owners. I think it is their agreement in respect of
20 the loan to guarantee and their agreement with regard
21 to the \$1 million, which isn't referenced here. And
22 you need to spell out how the \$1 million gets
23 triggered and paid. Okay, are you following me on
24 that?

25 MR. FRANKEL: Yes, Judge, I'm writing it down

1 as you speak.

2 THE COURT: Okay. The letter says that
3 Sheffield Strulovitch is paying the \$1 million or
4 having it be available on account of all interest
5 holders. But I think the plan should make it clear
6 that whenever you refer to interest holders here in
7 the "Treatment" section, in paragraph 62, and in the
8 "Means for Implementation" section, paragraph 67, it's
9 all interest holders.

10 So in paragraph 62 it says, "On the effective
11 date all interest will be cancelled," and then add the
12 word all before interest holders. And again, when
13 you're rewriting paragraph 67, you should spell out
14 that this is being, this new value is being provided
15 on account of or for the benefit of all interest
16 holders. And in paragraph 68, again, refer to all
17 interest holders receiving the benefit of the new
18 ownership subject to the dilution under the "Unsecured
19 Creditor" section.

20 MR. FRANKEL: Yes, Judge.

21 THE COURT: Okay. I have a question about the
22 \$1 million in addition to all of that, which is are
23 there two \$1 millions or just one \$1 million, because
24 there's the \$1 million that applies to the
25 reinstatement plan, as well.

1 MR. FRANKEL: It was \$1 million across both
2 depending upon what the needs turn out to be.

3 THE COURT: Okay, so you need to spell that
4 out.

5 MR. FRANKEL: Will do.

6 THE COURT: The last point I have on the plan
7 is the reference to the breakup fee in the commitment
8 letter, the April 8th commitment letter.

9 MR. FRANKEL: Yes.

10 THE COURT: That isn't binding until it's
11 approved by me. So I just, you know, I just want to go
12 on record on that, it's just not a binding provision
13 of the debtor's estate until I've approved that.

14 MR. FRANKEL: We'll make that disclosure.

15 THE COURT: Okay. Now, as far as the
16 disclosure statement, again, it's really similar
17 comments, instead of the paragraphs I've been
18 referring to it's in paragraph 33 and paragraph 38
19 where the changes need to be made that we've been
20 talking about. I do not believe that any issues as to
21 feasibility that have been raised with regard to this
22 plan are the type of issue that would render the plan
23 on its face unconfirmable, particularly given the
24 \$600,000 contingent increase to the commitment letter
25 and the \$1 million contribution amount that we've

1 already talked about. But you should add to the
2 disclosure statement where you discuss Brooklyn
3 Lender's claim, a sentence that states that Brooklyn
4 Lender asserts that its claim is higher and if it is
5 allowed in a greater amount than the commitment letter
6 and \$1 million commitment would enable payment of, the
7 plan without modification would not be confirmable.

8 MR. FRANKEL: We'll add that.

9 THE COURT: Okay. I do not believe any of the
10 other objections raised by Brooklyn Lender are, have
11 any merit. I've reviewed them all, including a
12 discussion of the liquidation analysis which I think
13 is premised solely on the contention that in a Chapter
14 7 liquidation there would be more time for Brooklyn
15 Lender to pursue its appeal, but that doesn't warrant
16 any further change to the disclosure statement, nor,
17 as I said, to its objections regarding feasibility.

18 So with those changes to the plan and
19 disclosure statement, I will approve the disclosure
20 statement for the D&W Spring and Meserole and Lorimer
21 plan.

22 Mechanically you should make the changes that
23 were discussed and email a blackline to chambers
24 copying counsel at Kasowitz. I'll review them to see
25 if they address my comments. If they do, we'll

1 contact you and you can file the amended disclosure
2 statement and plan and email the order approving the
3 disclosure statement and scheduling the confirmation
4 hearing to chambers.

5 MR. FRANKEL: Yes, Judge.

6 THE COURT: Okay. So then let me turn to the
7 bail plan which really doesn't have much of an
8 objection. This is the 53 Stanhope and other debtors'
9 plan. My comments here are again on the plan and then
10 conforming changes to the disclosure statement. The
11 plan, as I said, contemplates the sale of the
12 properties and it's in the "Source of Funds" section,
13 the means for implementation. Again, instead of
14 referring to 363(B), I think you need to refer to
15 1123(A)(5) and 1141(C) to be free and clear since it's
16 being done under the plan.

17 MR. FRANKEL: Judge, the reason I've included
18 363(B) has been that in the past title companies
19 always want the comfort of --

20 THE COURT: Right. Well you can, tell you
21 what, you can say 363(B), 1123 and 1141 because I
22 guess 1123 you can say is incorporating 363.

23 MR. FRANKEL: Okay, thank you.

24 THE COURT: Okay. And then on the sale
25 procedures, how are you going to set the opening bid?

1 Right now it's blank.

2 MR. FRANKEL: Yes, we had not, we were hoping
3 to work with Brooklyn Lender on a consensual opening
4 bid given the fact that they have the right to credit
5 bid and we hadn't gotten to that yet.

6 THE COURT: Okay. So I think there you should
7 drop a footnote and say that the debtor will try to
8 set opening bids for the properties in consultation
9 with Brooklyn Lender and the broker. And if it is
10 unable to reach agreement with Brooklyn Lender it will
11 do so with the broker and will have opening bids
12 confirmed at the, no later than seven days before the
13 hearing on confirmation.

14 MR. FRANKEL: Yes, Judge.

15 THE COURT: And then related to that in the
16 same paragraph with the blanks, you have it so that
17 people can bid on the whole group, subsets of the
18 group or individual properties and I just think you
19 need to conform this paragraph to that. You know,
20 opening bids per property shall be as opposed to just
21 the opening bid shall be.

22 MR. FRANKEL: Okay.

23 THE COURT: And then you already mentioned
24 363(K). There's a sentence at the, a paragraph, the
25 next to last paragraph of the bidding procedures

1 before the form of contract, it covers the mortgagee
2 and says the mortgagee shall be entitled to name a
3 designee, a designee who shall be deemed qualified to
4 bid without posting a qualifying deposit but complying
5 with the other requirements. I think you need to
6 precede that sentence by saying that the mortgagee
7 will have the right under Section 363(K) to bid the
8 amount of its allowed secured claim or allowed claim,
9 excuse me, it's allowed claim on each property. And
10 then the designee point is a designee who would be the
11 owner in respect of a credit bid.

12 MR. FRANKEL: Okay.

13 THE COURT: Those are my comments on the plan
14 and the exhibit. On the disclosure statements just
15 there are conforming changes. And in addition, I don't
16 see anything in here about funding the debtors pending
17 the sale. I think you should just state that you
18 intend to do that, I'm assuming that's the case,
19 right?

20 MR. FRANKEL: Yes, we're going to continue to
21 use the cash flow which has been sufficient to keep
22 the mortgage paid at the contract non-default rate and
23 pay operating expenses.

24 THE COURT: Okay, so you should put in the
25 disclosure statement.

1 Okay, so then let's turn to the reinstatement
2 plan which is the 55 Stanhope plan and covers the
3 other debtors. We already talked about the \$1 million
4 and I think that needs to be addressed in the same
5 way. In the "Source of Funds" paragraph, paragraph 21
6 and, again, it should say from a cash contribution be
7 funded by or on behalf of all Interest Holders,
8 initial caps, interest and holders. But then I think
9 you need to explain more than that, that this
10 contribution would come from the \$1 million to the
11 extent necessary and to the extent not used, that fund
12 is not used in the D&W plan. So that would be in
13 paragraph 21 of the plan and the similar paragraph in
14 the disclosure statement.

15 MR. FRANKEL: Yes, Judge.

16 THE COURT: Okay. And then the "Treatment"
17 section for interest holders in the plan should
18 provide that on account of the \$1 million -- I'm
19 sorry, that allowed interest holders will, I guess
20 this is a question I have here, why are you having all
21 interest be cancelled as opposed to just having them
22 survive subject to the dilution?

23 MR. FRANKEL: That was a mistake.

24 THE COURT: Okay. All right, I appreciate
25 you're plucking provisions from other plans but I

1 think this isn't a, there will be a contribution made
2 but, and I think you should provide for that here in
3 the treatment, to the extent necessary, to confirm the
4 plan from the \$1 million. But then have that the
5 interest will continue subject to dilution. And then
6 the dilution is fine the way you've described it.

7 MR. FRANKEL: I apologize for that mistake.

8 THE COURT: That's all right. And then on the
9 "Class Two Treatment" section, you need to I think
10 state, although it's implicit here, I think you need
11 to state it, particularly given the free and clear
12 language later in the plan that the mortgagee's liens
13 on the debtor's assets shall remain.

14 MR. FRANKEL: Yes.

15 THE COURT: And a similar statement in the
16 disclosure statement when you're talking about the
17 treatment of class two in paragraph 21. And then again
18 in the disclosure statement, the conforming paragraph
19 on treatment is paragraph 32 and then you need to
20 attach the exhibits, obviously, the three that weren't
21 attached.

22 MR. FRANKEL: So I will attach all exhibits
23 with the next version.

24 THE COURT: Right. So, again, with those
25 changes I'll approve the disclosure statement for the

1 reinstatement plan. Again, the other -- I'm sorry, you
2 need to add the same language in the disclosure
3 statement where you're discussing the claims of the
4 mortgagee that I've already had you put in the other
5 two --

6 MR. FRANKEL: Yes.

7 THE COURT: i.e. the risk that the plan is not
8 confirmable if those claims are allowed in a greater
9 amount, in a substantially greater amount.

10 Okay, and you should go through the same
11 process with this disclosure statement and plan as
12 with the other two, email a blackline and in this case
13 the three exhibits to chambers and we'll check them to
14 make sure they conform. If they do we'll let you know
15 and you can file them and then email the order
16 approving the disclosure statement scheduling the
17 confirmation hearing and related information for
18 entry. But with those changes I find that the
19 disclosure statements for each of these three plans
20 would contain adequate information with respect to
21 each plan and would overrule the other objections by
22 Brooklyn Mortgage to the extent that I haven't
23 incorporated them in my comments on the disclosure
24 statement.

25 MR. FRANKEL: Thank you, Judge. When I send

1 these to chambers with the revisions, may I also make
2 a motion to reduce time for the confirmation hearing
3 so that we can satisfy all the conditions before the
4 deadline and the refinancing?

5 THE COURT: Well I'm not sure you would need
6 that. I mean if you get it to me tomorrow, you can
7 send it out by the end of the week and I thought it
8 was, end of May was the financing. Is there a
9 confirmation date in the financing?

10 MR. FRANKEL: No. Well there was a May 31st
11 deadline.

12 THE COURT: Right, well that would be more
13 than enough time. I don't think you need it at this
14 point. I mean, obviously, if it drags a bit then, yes,
15 you can make such a motion, but I don't think you need
16 it at this point.

17 MR. FRANKEL: Okay, thank you.

18 THE COURT: Given the 28 days requirement.

19 MR. DOLINGER: Your Honor, Samuel Dolinger from
20 the US Attorney's Office, may I be heard very briefly
21 on debtor's plan?

22 THE COURT: Sure.

23 MR. DOLINGER: Thank you. The IRS has filed
24 some relatively minor administrative priority and
25 unsecured general claims. We have conferred with

1 debtor's counsel and it is our understanding that
2 debtor's do intend to modify the plans to provide
3 appropriately for the IRS's tax claims including
4 interest at the statutory rate where that's
5 appropriate. So it is our understanding that that
6 modification will also be made to the plans.

7 THE COURT: Okay.

8 MR. DOLINGER: Thank you.

9 MR. FRANKEL: Yes, Judge, and the amounts are
10 not material and I will, I will work with, continue to
11 work with Mr. Dolinger and make sure that the
12 government's interests are protected.

13 THE COURT: All right. So I guess before we
14 go ahead, I did ask one question on the three plans
15 that pertain to the Israeli investors which I haven't
16 raised so far. The debtor's reply to the disclosure
17 statement objection referred to discussions to send
18 those claims to arbitration, is that not finalized so
19 that wouldn't be in the disclosure statement?

20 MR. FRANKEL: As far as I know, it has not
21 been finalized, but I have not spoken -- that's, I
22 have not spoken to the attorney at Herrick Feinstein
23 who is handling that, there's a lot of other defendants
24 and it's all part of a global arbitration agreement and I
25 just don't know the answer, but I will find out.

1 THE COURT: All right, you should check and if
2 there is an answer you should put it in, if there isn't then
3 you shouldn't put it in.

4 MR. FRANKEL: All right.

5 THE COURT: And then as to the treatment of those
6 claims, I did rule that certain of them were, in fact,
7 subject to statutory subordination under 510(B) of the code
8 to the level of equity interests. It wasn't clear to me, I
9 don't think the disclosure statement discusses that and it
10 should, where those claims have already been ruled on. And
11 should just state that those claims will be treated as
12 equity interest to the extent allowed. And I'm just, I don't
13 recall which debtors they were at, but where they are
14 against a debtor then the disclosure statement should
15 reflect, I don't think you need a separate class because --
16 well it depends, I guess. If they're in the impaired class
17 in the sale plan you would need to provide for it, a
18 separate class. I just don't remember which debtors they
19 were against.

20 MR. FRANKEL: I believe the claims were filed
21 against every debtor, but I will check.

22 THE COURT: No, no, but my ruling only covered
23 specific ones.

24 MR. FRANKEL: Oh.

25 THE COURT: The ruling that found specific claims

1 to be 510(B) claims.

2 MR. FRANKEL: Right, those were Jefferson,
3 Kingston, Lafayette and Franklin, I will check that.

4 THE COURT: So that's the reinstatement plan then
5 I think. So as an unsecured claim they don't, well they
6 don't vote, but they, but the ones that go to the level of
7 interest would have the right to vote, because interests are
8 impaired under the plan. So I think you need to set up a
9 separate class of 510(B) claims and say they have the same
10 treatment as the interest class --

11 MR. FRANKEL: Okay.

12 THE COURT: In the reinstatement plan and if
13 they're entitled to vote.

14 All right, why don't we turn then to the Brooklyn
15 Lender joint plan and first amended disclosure statement.
16 Again, I have reviewed this plan, including the one that was
17 filed on Sunday, and the disclosure statement and the
18 debtor's objection and Brooklyn Lender's reply. Again, as I
19 always do, I have a number of comments on the plan and
20 disclosure statement, but I'm happy to hear from the debtor
21 and anyone else that wants to address the disclosure
22 statement first.

23 MR. ROSNER: Your Honor, this is David Rosner
24 from Kasowitz Benson Torres, we're okay to have Your
25 Honor go ahead and give us comments and observations.

1 THE COURT: Okay.

2 MR. FRANKEL: And, Judge, on behalf of the
3 debtors, as we stated in our objection, the thrust of
4 our argument is that the consideration of plan
5 confirmation should be deferred and I think that that
6 argument was enhanced by the plan filed last night.
7 Because what's going to happen is that in order to get
8 to a confirmable plan with final orders on the claims
9 that are being subordinated, there is going to need to
10 be a lot of litigation which would be made moot by
11 confirmation of the debtor's plans or at least
12 partially moot. And we think that there is no need to
13 litigate those at this point, particularly since the
14 plan's been providing for a sale of all the
15 properties, essentially deny the debtors the right to
16 reinstate and refinance which we believe was preserved
17 by the bench ruling. And, therefore, we think that it
18 makes more sense to proceed quickly with the debtor's
19 plans and if those are not confirmed then to move onto
20 the Brooklyn Lender plan.

21 THE COURT: Well, I think you'll see that
22 these plans may be on a different track, just as a
23 practical matter, towards confirmation. So why don't
24 we go through the comments first and then I'll come
25 back to the schedule.

1 I am focusing first on the plan but there need
2 to be conforming changes to the disclosure statement.
3 First, the, I don't know if this is intentional, I'm
4 assuming it is because it appears consistently in the
5 document, but the effective date of the plan is
6 conditioned on the closing of the auction sale. And
7 to me that raises a number of issues as to how the
8 plan can direct certain things to happen when it
9 hasn't gone effective yet, such as the auction,
10 itself. Or the delay in assuming or rejecting
11 contracts which under 365 is up to confirmation, not
12 the effective date. So I think that needs to be
13 thought through, I'm just not sure how you contemplate
14 that happening.

15 Second, the auction procedures are nowhere
16 bound and it's a central aspect of this plan. Where
17 discussed, it contemplates one sale with one
18 purchaser, notwithstanding the great number of
19 debtors, which doesn't make sense. And we don't even
20 know who the broker is. The definition of broker says
21 means Cushman & Wakefield or such other commercial
22 real estate broker appointed by the plan proponents
23 pursuant to the sale and bid procedures, which we
24 don't have. So all of those points need to be
25 clarified in a plan and a disclosure statement. One

1 can't consider a plan like this, which is a sale plan
2 dependent upon bid procedures, without knowing this
3 fundamental point.

4 As modified, the plan does have now a
5 subordinated creditor class, but oddly, it doesn't
6 include the 510(B) subordinated creditors, it just
7 includes the insider creditors, which is a problem
8 with the plan. Let me just make sure I have the
9 section here on -- the 510(B) group needs to be in a
10 different class and their treatment needs to be
11 specified as being the same as the interest holders.

12 MR. STEIN: Your Honor, one moment, this is
13 Matthew Stein on behalf of Brooklyn Lender. In the
14 plan the definition of interest includes subordinated
15 510(B) claims and, therefore, we've classified those
16 claims along with the class of interest holders.

17 THE COURT: Okay. But, and that includes for
18 voting purposes?

19 MR. STEIN: It does, yes, Your Honor.

20 THE COURT: Okay. You should spell that out
21 in the disclosure statement in more detail than just
22 referring people to the definition of interest.

23 MR. STEIN: Will do.

24 THE COURT: The treatment of the Brooklyn
25 Lender secured claim I think provides, as I read it,

1 that notwithstanding the order on allowance, it
2 includes all interest, it includes the whole claim as
3 asserted, right? If you go to page 11 --

4 MR. STEIN: I'm looking at, Your Honor, this
5 is Matthew Stein for the record, that was not the
6 intent. The intent was that the parts of the claim
7 that had been denied by Your Honor are up on appeal,
8 but it does include interest and other costs. So we
9 can clarify, we can clarify that.

10 THE COURT: Well you should just take the
11 sentence out, it just says, "Class two consists of the
12 allowed Brooklyn Lender secured claim." Because to
13 the extent you're under secured it wouldn't include
14 interest and fees.

15 MR. STEIN: Agreed.

16 THE COURT: Okay. And in the next sentence it
17 should say, "until its allowed claims are satisfied in
18 full."

19 And then this is an issue that runs through
20 the plan and disclosure statement. When you look at
21 the Brooklyn Lender administrative expense
22 contribution and the treatment of administrative
23 expenses, it says that it shall be enough to pay them
24 in full. But when you looked to the claim distribution
25 enhancement it's defined as first a voluntary

1 contribution. I'm not sure what that means. Does
2 that mean that Brooklyn Lender can say I'm not
3 contributing it? Or is it a committed contribution?

4 MR. STEIN: It's committed because Brooklyn
5 Lender is proposing the plan.

6 THE COURT: All right, so I think you should
7 take out, voluntary is just ambiguous and I think
8 Brooklyn Lender knows better than having it in there.
9 It just gives the purpose of enhancing the
10 distribution. Although it does say at the end, "to
11 insure that the holders of such claims are paid in
12 full in cash," although now I believe it provides, if
13 I can go back to the Sunday plan, that that isn't the
14 case. Let me just take a look at that.

15 No, it still just says, "to insure that the
16 holders of such claims are paid in full in cash." But
17 that's not what you're doing, right? There are
18 certain unsecured claims that you're not going to pay
19 in full in cash, you're not going to pay them at all.
20 So that needs to be changed.

21 MR. STEIN: Your Honor, for the record,
22 Matthew Stein again, the definition of allowed general
23 and secured claims excludes claims that subordinated
24 or disallowed. We can make sure that's crystal clear
25 but we also say that the claim distribution

1 enhancement is not intended to pay in full 510(B)
2 claims or other claims of the Israeli investors, or
3 claims of insiders.

4 THE COURT: Okay.

5 MR. STEIN: And the reason why the definition
6 of claim distribution enhancement was drafted the way
7 it is, is because the plan follows a waterfall
8 distribution and the enhancement is intended to true
9 up the administrative claim class and the general and
10 secured claim class to insure they do get paid in full
11 in cash.

12 THE COURT: Okay, well on that point the
13 treatment section actually doesn't say that for class
14 three or class four. It says that if the funds are
15 insufficient to pay general allowed unsecured claims
16 in full in cash, they shall receive a distribution of
17 cash from the claim distribution enhancement. So I
18 think you need to say sufficient pay the allowed claim
19 in full. Okay?

20 MR. STEIN: Agreed, Your Honor.

21 THE COURT: And then on the interest holder
22 and sub debt class, the plan says that they're
23 conclusively entitled to, they're conclusively deemed
24 to reject the plan, but that's not the case on your
25 1126(G) because it is a waterfall plan. The plan

1 doesn't say they're not getting anything.

2 MR. STEIN: Your Honor, again for the record,
3 Matthew Stein, our thinking on this was that based on
4 values it's exceedingly unlikely for them to receive a
5 distribution. If Your Honor thinks that we need to
6 solicit class five, then that is what we will do.

7 THE COURT: Well, then should there just not,
8 I mean you can say they're not getting a distribution
9 but right now it's a waterfall plan to they would need
10 to vote.

11 I don't understand how, in the, on page 15 it
12 says, "the disbursing agent shall have no obligation
13 to file income tax returns or similar reports, such
14 obligation shall remain with the debtors." If the
15 effective date is happening only upon the sale, I
16 would think the post effective date tax reports which
17 are all on the distributions, would be prepared by the
18 disbursing agent, it's just the pre-petition, I'm
19 sorry, the pre-effective date reports that are
20 prepared by the debtors.

21 On page 18 there's a problem with 365(D)(2) in
22 having assumption or rejection be after the effective
23 date. I think you can work it out in the sale
24 procedures but I just don't know how long it's going
25 to take between the confirmation date and the

1 effective date or how you're proposing that the debtor
2 do all the things that you want it to do and who is
3 acting on behalf of the debtor before the effective
4 date with regard to the option.

5 As far as the disclosure statement is
6 concerned, there's various provisions that need to be
7 fixed to conform with this, including the voting
8 statement on page 1, the treatment sections.
9 Obviously you need to talk about the sale procedures
10 differently and how the two contribution amounts work,
11 who is running the debtors pending the effective date,
12 page 11. You also need to state in detail, because
13 I'm assuming this will be your basis for looking for
14 this since you now are looking for a Court ruling at
15 confirmation that the insider claims and the Israeli
16 investor claims are subordinated as to the basis for
17 that.

18 Similarly, because I'm assuming that this is
19 the document that will justify the third party release
20 and the ability to set off claims or estimation
21 claims, why more than just saying as the plan
22 proponent Brooklyn Lender is entitled to a third party
23 release and a release of any claims that the debtor
24 may have against it. Which would include an estimate,
25 I believe, of the amounts of the monetary payments to

1 be made under the plan by Brooklyn Lender.

2 So I don't really know whether a mechanism
3 will work or you can just provide a black line to
4 chambers on this. It might, depending on the sale
5 procedures and other changes you come up with, it
6 might not. I'll let you try it and I'll see whether
7 these fixes are clear enough or whether we need to
8 have an adjourn date with a hearing on the disclosure
9 statement. To be safe, you should get an adjourn date
10 just so you can have on reserved. You can always tell
11 Ms. Lee you don't need it based on my review of the
12 black line. But you should also send to Mr. Frankel.

13 MR. STEIN: Will do, Your Honor, we will
14 provide your chambers and Mr. Frankel with an updated
15 amended plan and disclosure statement, I know they're
16 (indiscernible) tomorrow.

17 THE COURT: Okay. In the section about the
18 release where you're talking about the amount of money
19 that Brooklyn Lender is coming up with for the plan,
20 you should also give an estimate of the delay in costs
21 to Brooklyn Lender in simply foreclosing on each of
22 these properties.

23 MR. STEIN: Will do.

24 THE COURT: All right, does anyone have any
25 further thing to say for today's hearing or any

1 further questions? So going back to Mr. Frankel's
2 point about scheduling, I am not going to hold up
3 either plan to wait for the other plan. I don't
4 believe that's warranted in this situation. So it is
5 quite possible that I would not schedule a
6 confirmation hearing on both plans at the same time. I
7 will see where the finalization of the disclosure
8 statement shakes out before scheduling.

9 MR. FRANKEL: Great. Thank you, Your Honor.

10 THE COURT: Very well. All right, hearing no
11 one else then, I'll sign off at this point.

12 (Whereupon the matter is adjourned.)

13 I, Carole Ludwig, court approved transcriber, certify that
14 the foregoing is a correct transcript from the official
15 electronic sound recording of the proceedings in the above-
16 entitled matter.

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20 CAROLE LUDWIG

April 14, 2021

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